

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LORENZO LEE HUNTER, JR.,

Plaintiff,

Case No.: 04-CV-40325-FL

vs.

HON. PAUL V. GADOLA  
MAG. JUDGE WALLACE CAPEL, JR.

COMMISSIONER OF  
SOCIAL SECURITY,

Defendants.

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**REPORT AND RECOMMENDATION**

**I. INTRODUCTION**

This matter is before the Court on a Complaint for judicial review following an adverse decision of the Commissioner of Social Security. The Complaint was filed on November 16, 2004, and referred to the undersigned for all pretrial purposes that same date. A review of the file indicates that service of the summons and complaint has not been made upon the Defendant in this action, and Plaintiff has failed to respond to the Order to Show Cause, filed March 10, 2005.

**II. LAW**

Federal Rules of Civil Procedure Rule 4(m) provides in pertinent part:

**(m) Time Limit for Service.** If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

### **III. ANALYSIS**

On March 10, 2005, this Magistrate Judge issued an order directing Plaintiff to show cause in writing within seven days of receipt of the Order why he has failed to make service of the summons and complaint in this matter. To this date, he has not responded to the Order or attempted to effectuate service upon the Defendant.

Plaintiff bears the burden of showing good cause for failure to timely serve. Habib v. General Motors Corporation, 15 F.3d 72, 73 (6th Cir. 1994). In the absence of a showing of good cause, failure to timely serve a defendant mandates dismissal. Id. The Plaintiff in this case has failed to meet his burden and his Complaint accordingly should be dismissed.

### **IV. CONCLUSION**

For the reasons stated above, it is respectfully recommended that Plaintiff's Complaint be **DISMISSED** without prejudice.

Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), the parties are hereby notified that within ten days after being served with a copy of this recommendation that they may serve and file specific, written objections to the proposed findings and recommendations. Further, either party may respond to another party's objections within ten days after being served with a copy thereof. The parties are further informed that failure to timely file objections may constitute a waiver of any further right of appeal to the United States Court of Appeals. United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

In accordance with the provisions of Rule 6(b) of the Federal Rules of Civil Procedure, the Court, in its discretion, may enlarge the period of time in which to file objections to the report.

s/Wallace Capel, Jr.

**WALLACE CAPEL, JR.**

**UNITED STATES MAGISTRATE JUDGE**

Date: August 16, 2005

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 16, 2005, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:  
not applicable in this case.

and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Lorenzo Lee Hunter, Jr., 12078 Cherrylawn, Detroit, Michigan 48204, Social Security Administration, Office of the Regional Counsel, 200 W. Adams Street, 30<sup>th</sup> Floor, Chicago, Illinois 60606.

s/James P. Peltier  
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